

DATE: December 21, 1984

TO: Division Staff

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Bureau of Water Supply Engineering

THROUGH: Eric H. Bartsch, Director
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SUBJECT: Water - Procedure - Enforcement

Delete Working Memo 414 & 422 Indexed in 1984 Table of Contents as Memo 3.B.6.f.

Please note that additions and changes to Working Memo 414 are indicated by a (/) slash mark beside the appropriate section. The major changes occur in Appendix 210 regarding quarterly violation "Passion" reports. These changes are in effect for the October-November-December '84 quarter which is the first quarter for Federal FY '85.

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Enclosure

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SECTION 21.00
Water - Enforcement

21.01 Introduction

21.01.01 GENERAL

For years, the Virginia Department of Health has used education and persuasion, rather than litigation, as the primary method of securing improvements in public water supplies in Virginia. Even though education and persuasion will still be used, compelled compliance, through litigation, will be relied on more heavily henceforth. It is the Department's policy to enforce its regulations. Unless there is an immediate health risk, it is policy to pursue compliance by systematically increasing its enforcement actions from the least coercive to the most coercive. This section is designed to set forth a system for obtaining compliance with Virginia's Waterworks Regulations. Reference appendix 21A for the enforcement flow scheme.

21.01.02 ENFORCEMENT ACTIONS

- A. Determining a Violation - Before any action is taken, the district engineer must determine if a violation has taken place (review records, confirming phone calls to owner, etc.)
- B. Follow up on Violation - After a violation has been determined (Section 21.02 as follows), check the Minimum Enforcement Level Locator to see where minimum enforcement action may begin (Appendix 21B). For any violation there is an appropriate beginning level of enforcement action. Some enforcement levels are established in law or regulation and others are at the discretion of the enforcing agency.

21.02 PUBLIC NOTIFICATION

21.02.01 PUBLIC NOTIFICATION VIOLATIONS

- A. Public Notification Consists of Two Parts:
 - 1 - Consumer Notification
 - 2 - Media Notification
- B. If ownership changes during the period of violation, the new owner is responsible for the system and must receive the notice. The new owner may be the "Receiver" of a bankrupt water company or "Executor" of an estate. The owner of a waterworks must go to public notification for the following violations:
 - 1. Monitoring
 - a. Failure to send in the required number of samples or sample results.
 - b. Failure to collect any samples.

- c. Failure to collect and send in check samples or their results.
 - d. Failure to collect the required samples from the distribution system or proper location.
 - 2. PMCL
 - a. Exceeding a Primary Maximum Contaminant Level (PMCL).
 - 3. Other
 - a. Failure to use a proper analytical testing procedure.
 - b. Failure to meet a compliance schedule (owner has participated in drawing up the schedule when issued a variance, etc. - Variance/exemption also requires public notification).
- C. Public notification requirements and procedures differ according to PMCL or non-PMCL violations and community or noncommunity waterworks. Only a community PMCL violation requires newspaper, radio and television notification in addition to direct mailing. Media notification can be avoided if the violation is promptly corrected. Options covering these possibilities are included in the form notices in the Appendices 21 C thru I.

21.02.02 INTERPRETATIONS OF BACTERIOLOGICAL VIOLATIONS

- A. All bacteriological results for a given month shall be posed by the Secretary for that area by the 10th of the following month.
- B. The District Engineer will review the test results for his service area on the 10th of each month following the sampling compliance period (monthly or quarterly) entering onto the PASSION Report (See Section 21.04.02) those systems in violation. It may be possible to allow the secretary responsible for a given regional area to monitor the bacteriological records to identify and prepare public notifications for systems that fail to collect the required samples. If it is felt that a given secretary has too great a workload already or if a District Engineer would prefer to make these determinations, do not assign this job to a secretary. The secretary must be carefully trained to determine the proper number of samples and whether or not the samples taken are distribution samples. All public notification notices must be signed by the District Engineer or the Regional Director.
- C. COMPLIANCE DETERMINATION
 - 1. For systems collecting four (4) or more distribution samples per month, compliance will be based on a monthly average. The District Engineer will monitor these for both PMCL and sampling requirements monthly.
 - 2. For systems collecting less than four (4) bacteriological samples per month, compliance with the PMCL will be based on a quarterly average. The average will be taken for each calendar quarter (Jan./Feb./March; April/May/June; July/Aug./Sept; Oct./Nov./Dec.).
- D. EXCEPTIONS TO PUBLIC NOTIFICATION

1. Offset Sampling for the "FIX" - Waterworks required to submit 10 or fewer samples per month may be authorized to exclude one positive routine sample per month and thereby avoid public notification provided:
 - a. The regional office determines on a case-by-case basis and indicates in writing that no unreasonable risk to health existed under the condition of this modification. The reason may be one or more of the following (but not limited to these);
 - i. that the system provided and had maintained an active disinfectant residual in the distribution system.
 - ii. that the potential for contamination, as indicated by a sanitary survey (within last 12 months), is minimal.
 - iii. that the history of water quality at the public water system (no PMCL - Bacti. violations in last 12 routine samples) is good.
 - b. The owner submits a check sample on each of two consecutive days from the same sampling point within 24 hours after notification that the routine sample is positive, and each of these check samples is negative.
 - c. The owner shall report and record the original positive routine sample in compliance with Subsections 5.09.01 and 5.11.01 of the Waterworks Regulations, and
 - d. Where action was taken by the owner to remedy the positive results, the owner shall submit to the regional office a summary of corrective action taken, and
 - e. Another routine sample (the so called "substitute sample") shall be submitted to replace the positive routine sample, and
 - f. This provision may be used only once during two consecutive compliance periods.
 - g. Under no circumstances is the record of the original positive sample to be deleted from any official record. It should be marked as "off set", but it must remain.
2. PMCL-Bacteriological Violation with no Check Samples Required - An example of this would be the small waterworks taking only one sample per month and being averaged quarterly. If one of his three samples has two positive tubes, he will not have to collect check samples but will violate the PMCL. In situations like this, the media notification requirement will be waived if the waterworks owner, in the opinion of the District Engineer and Regional Director, has taken whatever actions possible to prevent the future occurrences and if the system has a good bacteriological history. This might involve the evaluation and correction of sampling points and/or sampling procedures. The reasons for waiving the media notification must be explained by the District

Engineer and agreed to by the Regional Director in a memo to the file. Again, in this situation, the owner would still have to go to consumer notification in his water bills.

3. Owner Fails to get Bacti Bottles - In those instances where the Lab fails to provide bottles or the Department fails to provide forms to a water supply owner, and that failure alone results in a monitoring violation, and no action by the owner could have prevented the violation; do not send him a notice of violation. Do send the owner a letter excusing him one time only and asking him to call us if he does not receive future bottles. Do write a memo to file stating the problem and its result, and that, therefore, no notice is being sent. In this one memo, cite all the systems in your area that are concerned, and place a copy in each file. Do not use this exception frivolously. If the owner is at fault, even if the Lab or Department contributed to the problem, he should go to public notification. This is meant for situations where the owner could not prevent the violation.

- E. The second bacteriological PMCL violation at a water supply within twelve consecutive compliance periods (1 year for monthly sampling, 3 years for quarterly sampling) will require serious consideration for the installation of chlorine disinfection equipment.

- F. CHECK SAMPLE COLLECTION

A bacteriological PMCL violation requires the collection of check samples until two sequential samples show no contamination. If the fifth check sample in such a series has been taken and the results show that no two sequential samples have been free of bacteria, then start a 20 sample series for MPN analysis. Unless the trouble is found and corrected, chlorination will be the minimum requirement.

- G. BOILING NOTICES

Check sample results as described in Item F above also are justification for boiling notices. If the owner refuses to issue the notices, the Regional Office shall issue it. Bureau Director must approve all such notices prior to issuance.

- H. A District Engineer can vary from the above items (E, F) if he feels they are not appropriate in a particular case. He must place a memo in the file, fully explaining his reasons. This Regional Director must concur. For example, the policy would be inappropriate if the problem causing the violations has been corrected and the District Engineer is confident a third violation will not occur. This situation might result from a problem not related to the source of supply.

21.02.03 POSTING PERIODS FOR NON-COMMUNITY SYSTEMS

Reference Working Memo on Noncommunity Program.

21.02.04 INORGANIC, ORGANIC AND RADIOLOGICAL VIOLATIONS (PMCL)

Anytime that a waterworks exceeds one of these PMCL standards on initial sample, the Central Office - BWSE Enforcement Chief should be notified immediately. As each of the required check

samples come in, the Enforcement Chief is to be updated.

The degree of health risk and necessary follow-up action, including public notification, will have to be determined on a case-by-case basis. In most instances, the same basic procedures and formats will be used for public notices involving these violations.

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21.02.05 TURBIDITY VIOLATIONS

The monthly operation reports and turbidity report forms for all surface water source systems will be reviewed by the District Engineer for compliance with the turbidity PMCL. Violations and public notifications will be handled in the basic format used for the bacteriological PMCL. Daily samples (averages) are required. A nephelometer must be used to measure turbidity. (See Section 4.00 of the Waterworks regulations for the turbidity PMCL.)

21.02.06 CONFIRMATION OF VIOLATION

An incorrect assessment of violation causes everyone time and trouble. It is well worth the time to double check all violations. For a violation involving a failure to collect the proper number of samples, the District Engineer will insure that the owner is contacted to confirm that all samples collected have been correctly reported.

All systems routinely collecting well or source samples instead of distribution samples will be contacted immediately to inform them of the need to take their required samples from their distribution system. No source samples should be submitted unless a special study is being conducted.

21.02.07 DRAFTING THE PUBLIC NOTICES

- a. Draft public notices that can be used by the owner will be prepared by the District Engineer or Assistant District Engineer using the attached samples as guides (Appendix 21C-21I). The draft public notices will be discussed with the Regional Director and field investigations scheduled when necessary. The draft public notice will be discussed and reviewed with the waterwork's owner, either by phone or in person, as the situation dictates.
- b. The notice of violation (Appendix 21J) is a letter signed by the District Engineer that will be sent to the waterworks owner informing him of his violation, explaining the public notification requirement, and attaching a copy of the agreed-upon public notice. Copies of the letter and notice should go to the Local Health Director and the local governing body.
- c. The owner must notify the Regional Office of his completion of public notification requirements (reference Appendix 21K).

21.02.08 CONTENT OF PUBLIC NOTICES

The example public notice formats are intended for use as a guide in preparing public notices for actual distribution. If the PMCL itself is violated, the owner must place a notice in a newspaper of general circulation in the area for three consecutive issues and provide copies of that notice to local radio and television stations. The owner may wish to make this published notice more formal than the notice sent directly to his water customers.

In preparing the public notices, discretion must be used in recommending that drinking water be boiled. If the system has a long history of serious violations, or if a sudden increase in MPN values occur, boiling notices may be included in the public notice. If such a situation does come about, the issuance of a public notice, including boil water provisions, should be coordinated with the local Health Director, although Local Health Director approval is not required. No boiling notices shall be issued until the situation has been cleared with the Central Office of BWSE.

21.02.09 CORRECTIONAL FIELD UNITS

Public notifications at correctional facilities must be posted in appropriate areas to ensure that all inmates have opportunity to read the notice. Additional measures may be taken if deemed necessary. If a PMCL violation is involved, media notification still applies.

21.02.10 MULTIPLE VIOLATIONS

Often a system may be found to be in violation of more than one regulation or standard. For example, the PMCL may be violated and the owner may not have taken the required check samples. Both violations should be included in a single public notice.

21.02.11 FOLLOW UP

Each month the District Engineer must contact any owner who appears to have failed to follow the public notification requirements. Telephone conferences are to be used to confirm a violation, but a notice of violation shall be issued to the owner as soon as it is clear that he has not complied. The Regional Director must consider each notice of violation of the public notification requirements as a defined need for enforcement action. His assessment of priority of enforcement activities will determine if that need is satisfied.

21.03 Preparation for Enforcement Action

21.03.01 Definitions

a. Enforcement Document.

A document within the Bureau of Water Supply Engineering for use at an evidentiary hearing. This document shall include the issues of violation, a discussion of the facts relevant to the violations, corrective measures which will eliminate the violations, and a proposed Order of Agreement between the Department and the violator.

b. Order.

An order issued by the Commissioner under Section 32.1-26 of the Code of Virginia (1950), as amended, which orders the violator to take specific corrective actions to eliminate his violation.

c. Order of Agreement.

An order issued by the Commissioner under Section 32.1-26 of the Code of Virginia (1950), as amended, which orders the violator to take specific corrective actions to eliminate his violation. This type of order differs from other orders in that it requires only those actions to which the owner has agreed in negotiation. The Order of Agreement refers to the negotiation and agreement and is signed by the owner in addition to the Commissioner.

21.03.02 Background

The adoption of the Department of Health, Waterworks Regulations in accord with Section 32.1-170 of the Code of Virginia (1950), as amended, and in accord with the Administrative Process Act, Title 9, Chapter 1.1:1 of the Code results in those regulations having the effect of law. In the enforcement of the Regulations, it is the policy of the Department of Health to hold an evidentiary hearing prior to petitioning a court for action. Some violations may pose an immediate threat or otherwise preclude the hearing step. In such emergencies, these procedures may be by-passed and an injunction may be sought directly from an appropriate court without utilizing these procedures; however, most petitions to a court will be preceded by a hearing. The reasons for adopting this policy lie in Section 9-6.14:17 of the Virginia Administrative Process Act. If a hearing is held and is properly administered, circuit courts will review agency action on the hearing record. Review will be limited to include:

- (1) Accordance with constitutional right, power, privilege, or immunity;
- (2) Compliance with statutory authority, jurisdiction, limitations, or right as provided in the basic laws as to subject matter, the stated objectives for which regulations may be made, and the factual showing respecting violations or entitlement in connection with case decisions;
- (3) Observance of required procedure where any failure therein is not mere harmless error; and
- (4) The substantiality of the evidential support for findings of fact. The determination of such fact issue is to be made upon the whole evidential record provided by the agency. The duty of the court with respect to issues of fact is limited to ascertaining whether there was substantial evidence in the agency record upon which the agency as the trier of the facts could reasonably find them to be as it did. In reviewing facts, the court shall take due account of the presumption of official regularity, the experience and specialized competence of the agency, and the purposes of the basic law under which the agency has acted.

Clearly, development of an adequate record by the agency at the hearing level is all important in sustaining agency action when agency action is subjected to court review. The Enforcement Document is the key tool in the development of that record. Once the Enforcement Chief and the Regional Director, have decided that enforcement action should be taken against a violator, the Regional Office is responsible for developing an Enforcement Document which presents all

relevant facts and issues concerning the violation. The Enforcement Document is used by the Regional Office as the information source for the negotiations with a violator to gain voluntary compliance. If voluntary compliance is gained through an Order of Agreement, no further action is required.

Many more enforcement documents will be prepared than will be used at formal hearings or in litigation. Most will result in a voluntary compliance. A few will result in neither voluntary compliance nor further enforcement, but as experience increases these should be more rare. The approval of the Commissioner, Assistant Commissioner, Division Director and Bureau Director are all necessary before a case can enter the formal hearing level or the litigation level of action.

The Enforcement Document forms the basis of a successful enforcement action because it forces the early organization of all relevant information into a coherent format, provides the data for negotiation with the violator to voluntarily comply and assists in narrowing the factual issues. Furthermore, the Enforcement Document serves as a thought organizer to facilitate communication between the Regional Office and the violator, as well as, between the Bureau-Division and the Commissioner; it develops a strong case against a violator in order to persuade the violator and/or the Commissioner to act favorably upon the Bureau's recommendations in order to gain the results which the Bureau feels are necessary for compliance.

21.03.03 Responsibility

a. Regional Director

It is the responsibility of the Regional Director or his appointee to prepare the Enforcement Document, in format and content prescribed in this procedure.

b. Enforcement Chief, BWSE

It is the responsibility of the Enforcement Chief to insure proper format and content and to advise the Regional Director or his appointee, if appropriate, as to what changes are required or what further information must be gathered. The Enforcement Chief shall decide when enforcement actions beyond the Regional Office level are appropriate or desirable.

c. Bureau Director, BWSE

It is the responsibility of the Bureau Director to review the final version of the Enforcement Document.

d. Division Director, Division of Water Programs

The Director, Division of Water Programs, shall have the authority for final review of the Enforcement Document.

e. Commissioner of Health

The Commissioner shall decide if immediate litigation is required or if an evidentiary hearing

shall be convened. He or his appointee shall preside over the hearing and decide if a violation of Regulations has occurred and whether such a violation was the consequence of circumstances beyond the control of the violator.

21.03.04 Procedures

21.03.04

a. Circumstance Requiring Enforcement Document

Enforcement action is initiated by the District Engineer when it has been determined that an owner has violated a State Law or Department of Health Waterworks Regulation. When public health is in imminent danger, the Regional Director shall contact the Chief of Enforcement. The Chief of Enforcement shall inform the Bureau and Division Director who will decide with the advice of the Assistant Attorney General which course of action will most rapidly correct the problem. When there is no imminent danger to the public health, the enforcement process, based on procedures of this manual, can be initiated by development of the Enforcement Document. No Enforcement Document should be prepared, however, until all lesser remedies are exhausted. The Regulations describe notices of violation and informal hearings which shall occur prior to the development of the Enforcement Document. Any other methods to gain voluntary compliance should be used, since voluntary compliance is the most desirable outcome.

Because the amount of work in preparing an Enforcement Document and associated material is great and because of limited manhours in the Bureau and the Attorney General's Office, only a few formal hearings can occur each year. Of those, only a very few can be carried to the litigation level. It is, therefore, important that only the highest priority cases receive this treatment. The assignment of priority within the Region shall be made by the Regional Director in line with principles outlined by the Chief of Enforcement and approved by the Bureau and Division Director. He shall prevent frivolous use of these procedures and shall manage their use so that the numbers of cases reaching the various levels of preceding do not overtax the resources available to the Bureau. When several regions are simultaneously approaching the formal hearing/litigation stages, the Enforcement Chief shall evaluate the current cases and submit those of highest priority to the Bureau Director and Division Director approval to proceed. When several worthwhile cases compete for further action and the pursuit of all would overtax the available resources, he may convene a meeting of a central office Ad Hoc Committee to assign priorities.

21.03.04

b. Preparation of Enforcement Document

When justified, as indicated above, the Regional Director or his appointee shall prepare an Enforcement Document, in format and content prescribed in this procedure. All data relating to the owner and the violation should be collected by the regional office staff and thoroughly researched relative to the violation in question. Pertinent data should be put in chronological order with any extraneous material put aside. If further data collection is required, such steps should be taken by the regional office staff to acquire the additional data. Once the regional office staff has sufficient material to support the enforcement action, the Enforcement Document can be prepared.

21.03.04

c. Enforcement Document - Format

The format of the Enforcement Document (reference Appendix 21M for example) is designed for maximum communication between the violator, the Bureau of Water Supply Engineering staff, the Division of Water Programs and the Commissioner. The Summary is designed to identify the problem and the proposed solution; the issues focuses on the matter under discussion; the Introduction describes the physical situation, the Discussion of Events provides the basic data, a brief history of the problem, any necessary clarification of facts under examination and possible solution to the problem; the Conclusion and Recommendations present to the violator and the Commissioner, the BWSE staff's proposed measures to expediently correct the violation of State Law or Health Department Regulations. Each of the above sections should be written in the order in which they appear below with the Summary written last but placed at the beginning of the Enforcement Document. It must be emphasized that the Enforcement Document is to be as concise as possible.

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- c. Issues - The purpose of this section is to define the reasons for bringing enforcement action against a violator. Any issue involves the point or question to be decided by the Commissioner, which involves the violation of the Regulations or the Law.

It is extremely important to be as specific as possible when stating the issues so that the reader is aware of the precise problem to be addressed in the Discussion of Events section of Enforcement Document. The issue is always presented in the form of a question. In the example included later there appears only one issue. However, more than one issue may be responsible for bringing enforcement action against an owner and more may be listed if necessary. If there is more than one issue then each issue should be listed following the phrase "The issues presented are:" Each issue should be numbered.

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- c.2 Introduction - The introduction is designed to describe the physical situation, and get all of the required data out for discussion. Included in this section should be information, if appropriate, on the water treatment process, chlorination of finished water, types of contamination, unusual topography of the physical location of the plant, etc.

A brief statement should be made as to how these facts are related to the issue by placing emphasis on the data which relate to or deals specifically with the owner's violation. If the issue deals with water quality which exceeds established MCL's, then the introduction should discuss the development of those requirements and any other pertinent data.

21.03.04

- c.3 Discussion of Events - This section is the basic data for your presentation and argument in support of the Issues section. It should be more of a discussion than simply a listing of the data based on chronological order. This section of the Enforcement Document will be most effective if it is in a narrative style and if the decision points are identified and described. It is very important to inform the reader of all important actions that had a positive or negative impact on the issue under discussion. For example, at some given point in time, an owner was given the option to take an action that would lead to compliance or to continue in noncompliance. The reader should be made aware of all important options presented to the violator and the decisions made by the

violation on each option. A brief discussion of why the violator chose a particular option should be included. The facts discussed in this section should be short and to the point with no long monologues. The facts should be organized so as to be discussed in the following format:

- (1) What should be happening?
- (2) What is actually happening?
- (3) The difference between what is actually happening and what should be happening.
- (4) The cause of the differences.
- (5) The solution of the problem.

The Discussion of Events must be designed to persuade the Commissioner and the violator that the conclusions reached by the BWSE staff are correct and the recommendations proposed by the BWSE staff will correct the violation.

21.03.04

- c.4 Conclusion - This section briefly ties all of the facts together that were brought out in the Discussion of Events section in order to answer the questions proposed in the Issue section. For each issue presented in the Issue section a statement identifying the exact corrective action required must be made in the Conclusion section.

21.03.04

- c.5 Recommendation - This section informs the Commissioner and the violator that the BWSE staff has determined, based upon its full investigation, that it is necessary to request the Commissioner to take some specific action against the violator. Following the specific recommendation, the Enforcement Document should inform the Commissioner of the results which this specific recommendation /action will have in correcting the violation of State law or Department Regulations.

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- c.6 Summary - The Summary should be the last section of the Enforcement Document that is written and should ordinarily be approximately 1/10 the length of the material being summarized. It should focus only on the issues and present only that data which are discussed within the Enforcement Document.

21.03.04

- c.7 Proposed Order of Agreement - A proposed Order of Agreement is prepared and attached to the Enforcement Document. It always accompanies the Document but is not a part of it. It reflects those points of agreement necessary to correct the violations; this initial proposed Order of Agreement does not reflect other conditions the owner may require. Such conditions may later be negotiated.

21.03.04

- d. Utilization of the Enforcement Document

Once the District Engineer and Regional Director are agreed that an enforcement action is required and the concurrence of the Chief of Enforcement is obtained, a draft version of the Enforcement Document is prepared. Once the Enforcement Document has been prepared by the Regional Office, the Document is sent to the Enforcement Chief, BWSE for review and comment. When the Regional Director and the Enforcement Chief are in agreement, the finalized document is then presented to the owner for his review at an informal hearing held at the Regional Office, Central Office or other agreed upon location. Incorporated below are the steps taken by the staff to utilize the Enforcement Document:

(1) Review of the Enforcement Document - It is the responsibility of the Enforcement Chief, or his appointee under guidance from the Attorney General's Office, to review the Enforcement Document to insure proper format and content and to advise the Regional Director or his appointee as to what changes are required or if further information must be gathered. If the Enforcement Document is not in the proper format as presented in this procedure or if the Enforcement Chief, feels that the data presented is not sufficient, then the Regional Director will be required to rework the Enforcement Document.

(2) Rework Enforcement Document - It is the responsibility of the Regional Director or his appointee to gather further information and/or change the Enforcement Document format, as necessary, in accordance with the comments submitted by the Enforcement Chief. The Regional Director must continue to rework the Enforcement Document until it is approved by the Enforcement Chief.

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(3) Informal Hearing - The Regional Director shall convene an informal hearing of the owner with regional and central office staffs (normally only the Chief of Enforcement) to attempt once again to resolve the conflict on a voluntary basis. As a minimum this additional hearing serves to insure that the owner knows the Bureau's intentions and that the Bureau fully knows and understands the owner's positions.

(4) Letter of Notification - If the Chief of Enforcement of Water Supply Engineering determines that a formal hearing is necessary to bring about compliance, he shall prepare the papers to convene an evidentiary hearing pursuant to Section 9-6.14:11, Code of Virginia. After the hearing has been authorized, it is the responsibility of the Chief of Enforcement to prepare a letter of notification (under the signature of the Hearing Officer) to the owner advising him of the time, place, and purpose of the hearing.

The Enforcement Document must be attached to this letter for the following reasons:

- A. The Enforcement Document is the data source which is to be used by the BWSE staff against a violator and, therefore, forms the basis of the hearing evidence. Thus, it follows that the intent of the law would be to give the owner the Enforcement Document with the hearing notice in order that the owner may prepare his defense.
- B. Additional new data not present in the Enforcement Document, which is sent to the owner will not as a matter of policy, be submitted as evidence against him at the evidentiary hearing unless the owner is notified of such data prior to the hearing. The letter of notification should request that the owner review the Discussion of Facts section and specify in writing whether or not he agrees with those facts, and if he does not agree with the facts, what he believes the facts to be.

(5) Presentation of the Enforcement Document at Hearing. The Enforcement Chief or the Assistant Attorney General shall make the presentation of the Enforcement Document on behalf of the BWSE at the hearing before the Hearing Officer.

21.03.04

a. Preparation of Order of Agreement

When, through negotiations, an agreement is reached between the Bureau and the owner as to the corrective actions that will be undertaken, it is necessary to solidify this agreement, in an Order of Agreement document (reference Appendix 21N for example) A penalty of up to \$10,000 per day of violation of an order is assessable if the owner fails to abide by an Order of Agreement. A lesser document would serve as evidence, but have little other legal impact.

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(1) Order of Agreement Format - An Order of Agreement is signed by both the owner and the Commissioner. The Order of Agreement is on Health Department letterhead paper and sets out the complete terms of agreement. It must contain a compliance date or compliance schedule. It may offer conditions or criteria established by either party. The Statement of Agreement explains when and how the Terms of Agreement were reached. The Terms of Agreement are those corrective action that will occur including the schedule, conditions and criteria of the accord. The Authority sections delineates the Commissioner's power and responsibility in both law and regulations. In the Waiver of Hearing the owner agrees to dispense with his right to an evidentiary hearing of the facts of the case, admits the violations have occurred, and confirms the facts to be as stated in the Order of Agreement. The Notice of Consequences of Violation simply quotes section 32-6.4 and 32-15 of the Code of Virginia verbatim.

(2) Order of Agreement - Statement of Agreement - It is important to state in the Order of Agreement with the owner/ violator exactly what terms of agreement were reached at a specific conference and date. The owner is entering voluntarily into this Order of Agreement to preclude further enforcement action by the Bureau. The order will clearly indicate that this is true. Any other details necessary to define the framework of agreement may be incorporated.

(3) Order of Agreement - Terms of Agreement - The order allows each side to make concessions. The Bureau concedes, at least, to forestall the enforcement process and may make other concessions. In doing so, the Bureau requires and the owner agrees to take certain corrective actions that bring compliance and cessation of all violations. The concessions and requirement compose, along with other conditions and criteria, the terms of agreement. These terms must be clearly and completely stated. No "understood" or "implied" conditions are to be assumed a part of the order; only those expressly stated can be considered enforceable. Vagueness is to be avoided. Attachments are not to be referenced; a compliance schedule or other condition must be clearly stated in the body of the order.

(4) Order of Agreement - Authority - The law and regulation shall clearly and completely cite the power and responsibility of the Commissioner to issue the order and take the actions which are a part of the order. If the order contains or implies variances or exemptions to the regulations, they must be as clearly identified and constructed as if they were independent of the order. The owner's responsibilities shall be completely cited from the law and regulations.

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(5) Order of Agreement - Waiver of Hearing - This section contains the statement which documents the owner's waiver of his right to a hearing on the matter as defined in the Virginia Waterworks Regulations and elsewhere.

(6) Order of Agreement - Signatures - It is necessary to get the owner's signature as a first signer on the document. He may agree to all the provisions outlined above, in which case the Bureau Director and Enforcement Chief will decide on the advise of the Assistant Attorney General, whether a sufficient number of elements are present to justify the Order or whether the enforcement proceeding shall continue. The Commissioner will sign the Order an issuer. (The Regional Director should submit the owner-signed original to the Chief of Enforcement for processing). This will complete the document except for delivery to the owner.

(7) Notice of Consequences of Violation - A citation and quotation of Sections 32.1-27 and 32.1-176 of the Code of Virginia is included.

21.03.05 Criminal Enforcement in General District Court

Since there are more persistent violations to the Virginia Waterworks Regulations than the Bureau has resources to address by formal agency hearings and due to our rate of progress at abating these violations through conventional methods, each Regional Office is urged to pursue as many violators as possible by way of the Commonwealth's Attorneys in General District Court.

Authority for taking this route is found in §32.1-27 of the Code of Virginia which authorities criminal sanctions for violations of health regulations; §32.1-176 reinforces the availability of the remedy.

There are situations where this type of action may not be appropriate, such as emergency situations or where a complicated ownership question exists, but where simple persuasion is required, this may be the solution. The following steps shall always be taken prior to initiating criminal prosecution.

- A. Contact the Enforcement Chief, BWSE or Bureau Director, BWSE.
- B. Prepare an enforcement document (see Appendix 21M). The importance of a well prepared enforcement document prior to initiating formal enforcement action cannot be over emphasized.
- C. The assistance of the Commonwealth's Attorney will be required. Initially a letter from the Bureau Director shall be sent to the Commonwealth's Attorney requesting assistance which will be followed by a contact from the Regional Director. Thereafter the Regional Office may communicate directly with the Commonwealth Attorney.
- D. The progress of the case must be reported to the Enforcement Chief to ensure others with an interest in the action will be informed.

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21.04 Enforcement Quarterly Report

21.04.01 Purpose

The purpose of this report is to gather the information necessary to produce part of the Federal Report required by EPA. The Central Office must take the field reported information and convert it into a format that is acceptable to the EPA. (YES, even the Central Office is required to do certain reporting.) Failure to make timely and accurate reports could jeopardize the water supply program in Virginia. EPA utilizes the reports from the States to make its annual report to the Congress who determines if the program is worthy of continued appropriations.

21.04.02 Procedure

21.04.02

a. General

A decision has been made by the Central Office to "abandon" the portion of MSIS which provides the computer determination of violations. This function had previously been done both manually and by MSIS with the regional offices purging the MSIS violation documents. With the elimination of MSIS violation determination, only manual determination and manual recordkeeping of violations will be utilized. We will continue to use MSIS for the inventory reporting part of the Federal Report.

21.04.02

b. Federal Report Categories

The following table shows the category of reporting required for the entire Federal Report and which party is responsible for generating raw data:

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<u>Category</u>	<u>Responsible Party</u>
A. Inventory -----	MSIS with field input
B. Variances & Exemptions -----	Central Office, BWSE
C. Violations	
1. Primary Maximum Contaminant -----	Regional Offices
levels	
2. Major monitoring/reporting-----	Regional Offices
(M & R)	
D. Follow-up Actions	
1. PMCL	
a. Informal-----	Regional Offices
b. Public Notices -----	Regional Offices
c. Formal-----	Central Office, BWSE
2. Major M & R	
a. Informal-----	Regional Offices
b. Public Notices -----	Regional Offices
c. Formal -----	Central Office, BWSE

21.04.02

c. Definitions

1. Compliance period - is the period within which certain sample requirements must be met - is either monthly or quarterly for bacteriological sampling. If a PWS must take 4 or more bacti's per month, its compliance period is monthly. Otherwise it is quarterly. For chemical sampling, surface WTP's compliance period is yearly; community groundwater is every three years; and noncommunity every five years.

2. Monitoring violation (M) - where a waterworks owner fails to report the results of sample analysis for a compliance period.

3. Reporting violation (R) - where a waterworks owner fails to report the results of sample analysis for a compliance period.

4. Major Monitoring & Reporting violations (M & R) - where a waterworks owner fails to take any samples for a particular contaminant during a compliance period, or where the owner has failed to report the results of analysis to BWSE.

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5. Intermittent Violations - violations that occur less than four months during a running year.
6. Persistent Violations - violations that occur for a single contaminant for four or more months during any twelve consecutive month period.
7. Informal follow-up actions - typically include telephone calls, warning letters, etc., these actions may be either verbal or written.
8. Formal follow-up actions - typically include consent orders, orders of the Commissioner, Court Actions, etc. these are actions which are legally binding. Approval from Central Office, BWSE must be obtained prior to proceeding to formal actions.

21.04.02

d. Report Submittal

In order to report in an efficient and timely manner, the Partially Automated Submission (Passion) Report is to be submitted on a quarterly basis to the Central Office, BWSE Enforcement Chief (reference Appendix 210).

It is envisioned that the following events will generally occur in each regional office:

- Upon manual determination of compliance by the District Engineer (on 10th of the month), violations will be noted on the PASSION Report as per instructions. If there presently exists a PASSION Page for the waterworks in violation, then just the violation entry is made (each sheet can contain up to 16 violations per waterworks). If there presently exists no PASSION Page, a page is developed. It is recommended that these PASSION Pages be kept in 3-ring binders by planning district.
- At the end of each quarter, the District Engineer, thru the Regional Director, shall send to the Enforcement Chief a copy of all new entries to the PASSION Report for that quarter. These copies shall be submitted with the next monthly report following the end of the quarter. Each Regional Director should maintain an internal system to insure that all reports are made in a timely fashion.
- The Enforcement Chief shall prepare all quarterly, semiannual and annual reports required by EPA from information received from the Regional PASSION Reports.

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21.04.02

e.

IMPORTANT RULES

1. Waterworks which show sample results below any PMCL established by a variance or exemption are not counted as a PMCL violation.
2. A violation has not occurred until the follow-up sampling has been completed and the average of results remains above the PMCL.
3. Each violation requires an informal action.
4. Multiple informal actions for the same violation count as only one informal action.
5. A public notice is counted only when the Bureau has received a copy of the notice as given in the newspaper, water bill, etc.
6. If a public notice is given for multiple violations, a public notice will be counted for each violation.

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Appendix 210-2

INSTRUCTION SHEET FOR PASSION

(Partially Automated Submission) Report (to be submitted quarterly to the BWSE Enforcement Chief.)

1. Waterworks owner - Enter official name of waterworks.
2. County - Enter county where waterworks is located.
3. Population - Enter approximate population served.
4. Persistent - To be used by Central Office.
5. Quarter/Year - Indicate which quarter and year is being reported.
6. District # - Indicate appropriate district.
7. Prepared by - Name of District Engineer or Acting District Engineer.
8. PWS-ID - Enter the seven digit identification number - only one PWS-ID number is entered per page. Sixteen violations can be noted on each page. NOTE: The PWS-ID number is assigned permanently to the waterworks regardless of change in owner, waterworks name, etc.
9. Violation identifier - This is a unique number that will be used to identify a specific violation that has occurred. The five digit code will be utilized as follows:

X YYYY

X = the region number

- | | |
|----|-----------|
| 1= | Abingdon |
| 2= | Lexington |
| 3= | VA Beach |
| 4= | Richmond |
| 5= | Danville |
| 6= | Culpeper |

YYYY = Consecutive 4 digit integer assigned at the Regional Office. This system will allow for 9999 violations to occur in each region. If violation, in excess of this occur contact the Central

Office for additional number assignments.

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Appendix 210-2

10. Record Action - Defines whether a new violation (enter 2), changing information for a current violation (enter 3), or deleting an existing violation (enter 1). When changing a record, type 3, enter all the data for that line but when deleting a violation enter the violation identifier and record type 1 only.
11. Violation type - Identifies by a 2 digit code the general type of violation that has occurred. See Appendix 210-3 for listing of violation type codes.
12. Contaminant identifier - each has a unique four (4) digit number. See Appendix 210-4 for listing of each identifier.
13. Date of violation - enter the first day of the month within which the violation occurred. Enter the year first, then month, then day.
14. Violation duration - enter the number of months the violation has occurred for each contaminant.
15. Major/Minor - void
16. Required - enter the number of samples required.
17. Taken - enter the number of samples actually taken.
18. Method - enter the code of the method used to analyze the results.
See Appendix 210-5.
19. Result - record the results of sample analysis with decimal.
20. Decimal - see above
21. MCL - enter the PMCL value for the contaminant in violation in the same format as the result above.
22. Follow-up actions - enter the codes which adequately and accurately describe the follow-up actions taken. See Appendix 210-6.

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(BLANK PASSION REPORT FORM)

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(BLANK PASSION REPORT FORM)

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Appendix 210-3

VIOLATION TYPES	
CODE	VIOLATION
01	single sample PMCL
02	average PMCL
03	regular sampling
04	check (repeat) sampling
05	failure to notify state
06	failure to give public notification
07	treatment techniques
08	V or E compliance schedule
09	record keeping
10	operations report

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CONTAMINANT IDENTIFIER

CONTAMINANT	IDENTIFIER
Turbidity	0100
Arsenic	1005
Barium	1010
Cadmium	1015
Chromium	1020
Fluoride	1025
Lead	1030
Mercury	1035
Nitrate	1040
Selenium	1045
Silver	1050
Endrin	2005
Lindane	2010
Methoxychlor	2015
Toxaphene	2020
2,4-D	2105
2,4,5-TP Silvex	2110
TTHM	2950
Chloroform	2955
Bromodichloromethane	2960

Dibromochloromethane	2965
Bromoform	2970
Coliform	3000
Gross Alpha Activity	4000
Uranium	4006
Combined (Total) Radium	4010
Radium-226	4020
Radium-228	4030
Cross Beta Activity	4100
Tritium	4102
Strontium-90	4174

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Appendix 210-5

ANALYSIS METHOD

CODE	METHOD	
001	Nephelometric	
101	Atomic Absorption	
103	Flameless Atomic Absorption	
105	Brucine Colorimetric	
106	AA-Cold Vapor (Mercury)	
107	Electrode	
108	Atomic Emission	
109	Cadmium Reduction	
111	Colorimetric	
118	Electrode (Fluoride)	
163	Automated Cadmium Reduction	
201	Organochlorine Pesticides	
203	Chlorinated Phenoxy &	Herbicides
205	Gas Chromatographic	
215	Liquid/Liquid Extraction	
301	DPD - Chlorine Residual	
303	Membrane Filter	
305	Fermentation Tube - 10 ML	
307	Fermentation Tube - 100 ML	

401	Gross Alpha & Beta	
403	Combined Radium	
405	Total Radium	
407	Radium - 226	
409	Tritium	
411	Cesium - 134	
413	Uranium	
418	Radium 226-228 Sequential	Method
999	Other	

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APPENDIX 21 0-6

DEFINITIONS OF ENFORCEMENT FOLLOW-UP ACTIONS

CODE	TYPE OF ACTION
A	Informal Action
B	Informal Hearing
C	Technical Assistance Contact
D	Site Visit for Enforcement Purposes
E	Public notification required of waterworks
F	Public notification received from owner
G	State-issued public notification
H	Boil Water Notice
J	Notice of Violation
K	Compliance agreement
L	Commissioner's order
M	Administrative penalty
N	Show-Cause Hearing
P	Case under development
Q	Civil case filed*
R	Consent decree or consent judgment*
S	Default Judgment*
T	Injunction*
U	Temporary Restraining order/preliminary injunction*
V	Criminal case filed*
W	Criminal case resolved+
X	Compliance achieved
Y	Variance/Exemption issued
Z	Turbidity waiver issued
3	Case appealed*
4	Case dropped*
5	Hook-up/Extension ban
6	Intentional no-action
7	Unresolved
8	Other

* Civil Actions
+ Criminal Action

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Supplement to APPENDIX 21 0-6

DEFINITIONS OF ENFORCEMENT FOLLOW-UP ACTIONS (continued)

- N. Show-Cause Hearing: A hearing held to provide opportunity for the violator to present information to the Department public on reasons for not complying. Such hearings often result in compliance agreements or other formal actions.
- P. Case Under Development: The regional office staff are preparing an Enforcement Document to refer a civil case to the Attorney General's Office, or a criminal case to the Commonwealth Attorney; a hearing before the Commissioner, or a consent order to the waterworks owner.
- Q. Civil Case Filed: Documents for civil litigation filed with State Attorney General and/or courts, but case is not resolved.
- R. Consent Decree or Consent Judgment: A formal court declaration, voluntarily entered into by both the owner and the Department which specifies a schedule of actions that will be taken by the owner to achieve compliance with the regulations, and actions which may be taken by the Department in response to the system actions. Jurisdiction is retained by the court to oversee compliance with decree/judgment provisions.
- S. Default Judgment: A court judgment which is rendered as a consequence of the non-appearance of the waterworks owner.
- T. Injunction: A final order issued by the court directing the owner to take certain action (or forbidding certain actions).
- U. Temporary Restraining Order/Preliminary Injunction: An immediate, non-final order issued by the court forbidding the owner from taking certain actions.
- V. Criminal Case Filed: Documents for criminal prosecution filed with the courts, but case is not resolved.
- W. Criminal Case Resolved: Case resolved through verdict, pleas, injunction, etc.
- X. Compliance Achieved: System has returned to compliance with the Waterworks Regulations.
- Y. Variance/Exemption Issued: A variance or exemption authorized by the Waterworks Regulations has been issued to the system.
- Z. Turbidity Waiver Issued: A waiver increasing the allowable turbidity limit for the system has been issued to the system.
- 3. Case Appealed: Owner has filed an appeal relating to a previous civil or criminal action.

4. Case Dropped: Action against the owner has been discontinued by the Department. This applies to civil and criminal actions, and this code should be used only where actions "P" through "U" have been reported.

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Supplement to APPENDIX 21 0-6

DEFINITIONS OF ENFORCEMENT FOLLOW-UP ACTIONS

- A. Informal Action: Informal written or oral notification that a potential violation has occurred, explaining what the violation was (MCL, M/R, etc.). The waterworks owner is asked if any information exists which may alter the original finding.
- B. Informal Hearing: Discussion of violation and explanation of requirements for compliance.
- C. Technical Assistance Contact. Discussion of system status, requirements for monitoring and reporting, operational problems; triggered by complaint or request from waterworks owner.
- D. Site Visit for Enforcement Purposes: Visit in response to violation(s) which are being assessed for enforcement and may have received unsuccessful, informal follow-up; this visit could include discussion of violations, collection of samples, discussion of penalties if compliance not achieved, etc.
- E. Public Notification Required of Waterworks: Waterworks owner is notified that public notice is required. (see J).
- F. Public Notification Received from Owner: Receipt of public notification issued by owner in response to violation.
- G. State Issued Public Notification: Notification issued by the Department; may be in response to violations about which the owner did not notify the public. May be done coincidentally with a boil water order.
- H. Boil Water Notice: A notice to the waterworks owner/consumers of a deficiency that could result in an acute risk to health and that users of the water should boil the water before it is used.
- J. Notice of Violation: Formal notification of waterworks owner that violation(s) occurred, that the owner must take some action to remedy the violation (disinfect, take correct samples, report results, give public notification, etc.) and that certain legal actions are available if the previously specified actions are not taken. If public notification is required, code "E" must also be shown on PASSION.
- K. Compliance Agreement: A document agreed to by the Department and the waterworks owner which specifies action and dates which will be taken by the owner to achieve compliance with the regulations and actions which may be taken by the Department if the system fails to accomplish the specified tasks.
- L. Commissioner's Order: An order issued by the Commissioner requiring the owner to take certain actions within specified time periods.
- M. Administrative Penalty: A penalty (usually monetary) assessed by the Commissioner or his agent in response to a violation of the regulations or failure to take actions ordered by the Department to achieve compliance.

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Supplement to APPENDIX 21 0-6

DEFINITIONS OF ENFORCEMENT FOLLOW-UP ACTIONS (continued)

5. Hook-up/Extension Ban: A ban of further connections to the water system or extensions of water system to meet additional water demands. This ban is made through a limiting capacity on the operation permit. This code should only be used when the hook-up/extension ban is the result of a reoccurring or continuous PMCL violation.
6. Intentional No Action: The Department has reviewed the owner's compliance history and has decided to take no action response to this specific violation. A memo to the files explaining this response is required.
7. Unresolved: No action has been taken in response to this violation. There has been no general review of the systems compliance history.
8. Other: An action which cannot be placed into one of the other categories has been taken. This code should be used very infrequently.

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APPENDIX 21

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APPENDIX 21A

(DRAWING OF ENFORCEMENT PROCEDURE)

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APPENDIX 21B

MINIMUM ENFORCEMENT LEVEL LOCATOR

INITIAL ENFORCEMENT LEVEL
FOR CONFIRMED VIOLATIONS*

VIOLATION TYPE	1	2	3	4	5
A- PMCL Violation			X		
B- Minor M & R - Inadequate number of samples			X		
C- Failure to use proper analytical technique			X		
D- Failure to meet variance/ exemption deadline			X		
E- Failure to give PMCL public notification		X			
F- Failure to meet operational variance deadline		X			
G- Emergency situations	CAN	BE	ANY	LEVEL	
H- Failure to obtain construction permit		X			
I- No certified operators		X			
J- Reliability violations		X			
K- SMCL violation		X			
L- Failure to use certified laboratory		X			
M- Failure to submit compliance schedule for PMCL V/E	X				
N- Failure to apply for PMCL V/E	X				

- *1. Telephone contact
- 2. Written contact
- 3. Public notification
- 4. Informal hearing
- 5. Formal follow-up action (See Section 21.04.02)

Working Memo 453

Appendix 21C

(WATERWORKS LETTERHEAD)

Dear Customer,

We have been advised by state health officials that we are in violation of Virginia waterworks regulations because we failed to furnish them with the proper number of water samples from the _____
_____ water system during the month(s) of _____
_____.

Past records show that the system has had no problems with bacterio-logical contamination, however, without proper sampling and testing the quality of water delivered to our customers for the above period cannot be determined.

We are attempting to prevent further violations of this type by collecting the required samples per month and submitting them to the State Laboratory.

Future violations, however minor, will be reported to you as part of new federal and state waterworks regulations aimed at increasing consumers awareness of conditions that exist in their public water systems.

Sincerely

(WATERWORKS OWNER'S SIGNATURE)

Working Memo 453

Appendix 21D

(WATERWORKS LETTERHEAD)

Dear Customer:

We have been advised by state health officials that we are in violation of the Virginia waterworks regulations because we failed to collect the required "check samples" for bacteriological analysis from ____(name of waterworks).

The reason for collecting "check samples" is that one of our routine water samples sent to the State Laboratory in (month)____indicated contamination.

Past records show that our system has had no previous problems with bacteriological contamination, therefore, the health officials feel that there is little need for concern about the safety of your water.

We are attempting to prevent further violations by carefully monitoring our sample results as they come back from the laboratory.

Future violations, however minor, will be reported to you as part of new federal state waterworks regulations aimed at increasing consumers awareness of conditions that exist in their water systems.

Sincerely,

(WATERWORKS OWNER'S SIGNATURE)

Working Memo 453

Appendix 21E

(WATERWORKS LETTERHEAD)

Dear Customer:

We have been advised by state health officials that we are in violation of the Virginia waterworks regulations because we failed to furnish them with water samples collected from our water distribution (piping) system at the (name of waterworks) for the month(s) of _____.

Past records show that the system has had no problems with bacteriological contamination; however, samples from our distribution system are needed to determine the quality of the water actually delivered.

We are attempting to prevent further violations of this type by collecting the required water samples from our distribution system.

Future violations, however minor, will be reported to you as part of new federal and state regulations aimed at increasing consumers awareness of conditions that exist in their public water systems.

Sincerely,

(WATERWORKS OWNER'S SIGNATURE)

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Appendix 21F

(WATERWORKS LETTERHEAD)

Dear Customer:

In keeping with new state health regulations we, are obliged to inform you that we are in violation of Virginia waterworks regulations because water being served to our customers in _____(name of subdivision) _____did not comply with a Primary Maximum Contaminant Level or bacteriological quality during____(month) _____. This appears to be a transitory breach of the bacteriological quality standard.

State health officials feel that there is little need for concern about the safety of your water because additional samples have been taken and no further contamination was found.

We are attempting to prevent further violations of this type by (increasing chlorination levels, flushing distribution system, etc.).

Further violations, however minor, will be reported to you as part of new federal and state waterworks regulations aimed at increasing awareness of conditions that exist in public water systems.

Sincerely,

(WATERWORKS OWNER'S SIGNATURE)

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Appendix 21G

Notice to Customers
of the
(name of waterworks)
Public Water Supply

(Name of Owner), owner of (name of waterworks), has been advised by State Health officials that he is in violation of Virginia waterworks regulations because water being served to the customers in (name of community) did not comply with a Primary Maximum Contaminant Level for bacteriological quality during the month of _____. This appears to be transitory breach of the bacteriological quality standard.

State Health officials feel that there is little need for concern about the safety of your water because additional samples have been taken and no further contamination was found.

We are attempting to prevent further violations of this type by (increasing chlorination levels, flushing distribution system, cleaning our reservoir, etc.).

Further violations, however minor, will be reported to you as part of new Federal and State waterworks regulations aimed at increasing awareness of conditions that exist in public water systems.

This notice is in keeping with Virginia Waterworks Regulations.

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Appendix 21H

(WATERWORKS LETTERHEAD)

Dear Customer:

In keeping with new state health regulations we are obliged to inform you that we are in violation of the Virginia waterworks regulations because water being served to our customers in (waterworks subdivision) did not meet the Primary Maximum Contaminant Level for (contaminant) during (month(s)) .

(Paragraph explaining significance of PMCL as edited from appendix of regulations)

(Paragraph describing actions being taken to eliminate problems)

(Paragraph describing precautions to be taken by consumers.)

Further violations, however minor, will be reported to you as a part of new federal and state waterworks regulations aimed at increasing consumer awareness of conditions that exist in their public water systems.

Sincerely,

(WATERWORKS OWNER'S SIGNATURE)

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APPENDIX 21i

Notice to Customers
of the
(name of waterworks)
Public Water Supply

(Name of Owner), owner of (name of waterworks) has been advised by State Health Department officials that he is in violation of state waterworks regulations because water being served to consumers in (name of community) did not meet the primary maximum contaminant level for (contaminant) during (month(s)).

(Paragraph explaining significance of PMCL as edited from appendix of regulations).

(Paragraph describing actions being taken to eliminate problems).

(Paragraph describing precautions to be taken by consumers).

Further violations, however minor, will be reported to you as a part of new federal and state waterworks regulations aimed at increasing consumer awareness of conditions that exist in their public water system.

This notice is in keeping with Virginia Waterworks Regulations.

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Appendix 21J

NOTICE OF VIOLATION

BACTERIOLOGICAL OR CHEMICAL EXAMINATION

Date:

Name of Waterworks:

Owner of Responsible Official:

Mailing Address:

Month or Reporting Period:

Number of Distribution Samples Required:

Number of Distribution Samples Received:

PMCL violation:

Reference: The following references in Virginia Law and Department of Health Regulations are for your convenience if you decide that you require the assistance of an Attorney.

A. Title 32.1, Chapter 6, Article 2, Code of Virginia (1950) as amended

B. Commonwealth of Virginia Waterworks Regulations

- 1)
- 2)
- 3)
- 4)

Summary of Violation

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Appendix 21J

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Required Actions

- Option 1 - State and federal regulations require a waterworks owner to give public notice when there is a failure to do the required monitoring. This public notice must be included in the next water bill if it is to be sent within three months. If you do not send our bills or if none will be sent in the next three months, then the notice must be sent in a special mailing to each customer on your water system.
- Option 2 - State and Federal regulations require a waterworks owner to give public notice whenever a Primary Maximum Contaminant Level is exceeded. This public notice must be included in the next water bill if it is to be sent within three months. If you do not send out bills or if none will be sent in the next three months, then the notice must be sent in a special mailing to each customer on your water system. Within seven days of receipt of this notice, you must give public notice in three consecutive issues of a newspaper or general circulation in the area, and must provide public notice to area radio and television for their use, if they so desire.
- Option 3 - Notification of this violation must be given to the persons served by the waterworks and must be posted conspicuously at all places where water is made available to the public. This public notice shall remain readable and be protected by glass, plastic, or some other suitable covering and remain in place until such time that the violation has terminated.

Remarks:

Any questions you may have, please call

Signature

WM 453

Appendix 21K

Public Notification Completion Report

On _____ the attached public notice was distributed to
(date)

the public concerned with the _____
(name)

waterworks. This public notice was:

☐ ☐ ☐ ☐ ☐ ☐

☐ ☐ ☐ ☐ ☐ ☐ Enclosed with water bills _____
(date)

☐ ☐ ☐ ☐ ☐ ☐

☐ ☐ ☐ ☐ ☐ ☐ Published in the _____
(newspaper)

on _____
(date)

☐ ☐ ☐ ☐ ☐ ☐ By direct mail _____
(date)

☐ ☐ ☐ ☐ ☐ ☐

☐ ☐ ☐ ☐ ☐ ☐ Provided to _____ television station
(call letters)

at _____ on _____
(location) (date)

☐ ☐ ☐ ☐ ☐ ☐

☐ ☐ ☐ ☐ ☐ ☐ Provided to _____ radio station at
(call letters)

_____ on _____
(location) (date)

☐ ☐ ☐ ☐ ☐ ☐

□□□□□□ Posted in _____ post office _____
(date)

□□□□□
□□□□□ (Non-community systems only.) Posted at all locations at which
is made available to the public on _____
(date)

I hereby certify that the above mentioned public notice was distributed in the indicated manner.

(signature)

Return to: (Regional Office Address)

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Appendix 21M

COMMONWEALTH OF VIRGINIA

James B. Kenley, M.D.

Department of Health
Richmond, VA 23219

Bureau of Water Supply Engineering

Enforcement Document

Number XXXI

September 3, 1978

Revised September 16, 1978

Re: Brightview Estates - Public Water Supply
Jefferson County, Virginia

Owned by Brightview Water Company
A subsidiary of Brightview
Corporation Inc., John A. Wronge, President

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Appendix 21M

Bureau of Water Supply Engineering

Enforcement Document
Brightview Estates Public Water Supply

September 15, 1978 - Page 1

Summary:

Although the area was generally unsuitable for development of a public water supply, the Brightview Water Company proceeded to develop such a system in Brightview Estates while its parent firm, Brightview Corporation, constructed and sold homes there. This development of a waterworks without a permit from the Virginia Department of Health is a violation of Virginia Waterworks Regulations and the Code of Virginia. The construction and sale of homes in the Brightview Estates subdivision must stop while plans and specifications are developed and approved and while reconstruction of the waterworks in accord with the Virginia Waterworks Regulations occurs. During this period the homes which have been constructed must not be occupied.

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Appendix 21M

Bureau of Water Supply Engineering
Enforcement Document
Brightview Estates Public Water Supply

September 15, 1978 - Page 2

Issues:

Does the initiation and continuation of construction of the Brightview Estates Waterworks System constitute an unmitigated violation by the Brightview Water Company of Virginia Waterworks Regulations Section 3.14 and Title 32.1, Chapter 6, Article 2, Section 32.1-172 of the Code of Virginia?

Introduction:

Southwestern Jefferson County is an entirely rural area containing no towns or villages of more than 1000 people. In prehistoric time the area was a lake bed, however, today it is very flat land bordered by the Hazy Mountain ridge and lesser hills. The geology of the area consists of an overburden of clay and river jack of varying depth. At Hazy Mountain the overburden is negligible, but at a mile distance from Hazy Mountain it is more than three hundred feet thick.

At the interface between the overburden and the igneous bedrock, water flows in streams of great quantity, however, the overburden is a poor filtering media and the water in these streams is cloudy (or turbid). The degree of turbidity is nearly always more than is acceptable in drinking water. The particulate material that causes the cloudiness interferes with chlorine disinfection and harbors possibly dangerous bacteria and viruses.

Treatment techniques required to improve the quality of such cloudy water to a degree acceptable for drinking are very expensive. These techniques are not usually economical for systems having less than 500 connections.

For the aforementioned reasons, no sizable drinking water systems have been developed in southwestern Jefferson County. Three quarries use large wells to provide stone washing water and more than 50 small home wells are in operation throughout the area. All produce cloudy water. It is clear from the nature and history of southwestern Jefferson County that the probability of economically developing a safe and pure drinking water supply is very low.

Discussion of Events:

On June 2, 1978, the Brightview Corporation requested that the Jefferson County Board of Supervisors rezone 300 acres of A-1, agricultural land to R2, single family residential land. The rezoning of the land was approved in

accord with the subdivision plat for Brightwater Estates dated October 30, 1977 (see copy of plat Attachment A and approval letter, Attachment B).

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The Board specifically required that a State Health Department approved water supply be developed and stated that no additional conversion of A-1 land along Route 600 would be approved since a major increase in residential housing in that area would severely and negatively affect traffic flow and the school-age children distribution.

Also on June 2, 1978, the State Corporation Commission approved the Certificate of Convenience and Necessity for the Brightview Water Company, a subsidiary of Brightview Corporation (Attachment C). Mr. John Allen Wronge is president of Brightview Water Company and Chairman of Brightview Corporation.

A meeting was held on June 3, 1978, between Mr. Wronge and Mr. James Arnold Wright, the District Engineer for the State Health Department. At the meeting Mr. Wronge presented a plat of the Brightview Estates with a well lot and water system layout overlayed on the drawing (Attachment A). Mr. Wright presented a copy of the current Virginia Waterworks Regulations (Attachment D). In his presentation, Mr. Wronge described the water system by which the Brightview Water Company intended to serve the 285 platted lots of Brightview Estates. Mr. Wright, in turn, indicated the historical, geological problems with providing acceptable drinking water from wells in the Brightview Estates area and the numerous conflicts between the proposed water system and the regulations (see conference report, Attachment E).

During July, 1978, the Brightview Corporation applied for and received from the county 250 home construction permits. It also contracted with Quick Set Water Systems Corporation to install a water supply system. Construction of the waterworks began shortly thereafter, however, no application for a water supply construction permit had been filed. Twenty-eight homes were constructed and on August 15, 1978, the Corporation began offering homes for sale in Brightview Estates.

Mr. Wright became aware through advertisements of the selling of homes and made an inspection at the construction site on August 20, 1978 (see advertisement, Attachment F and inspection report, Attachment G). He found that a water system for the subdivision was ninety percent complete. Workmen at the site indicated the wells periodically produced muddy water. The two wells serving the system were in operation and Mr. Wright collected samples from each (see Attachments G and H, the results of analysis of the samples). The Brightview Corporation

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had disregarded his recommendations of June 3, 1978, and proceeded to contract for a water system that did not satisfy the design requirements of the Virginia Waterworks Regulations. Mr. Wright immediately sought Mr. Wronge and again explained the design requirements of the regulations and the engineering reasons for these requirements. Additionally, Mr. Wright notified Mr. Wronge, as president of the Brightview Water Company, that the Company was in violation of Virginia Waterworks Regulations and the Code of Virginia in that it had failed to obtain a permit to construct the subdivision waterworks.

In a letter (certified mail, return receipt requested) dated August 20, 1978, Mr. Wronge received written notification of the violation and a full explanation of the regulations and the reason for the regulations. The letter (Attachment I) includes 17 items of construction to bring the waterworks design into compliance with the regulations. Mr. Wronge was directed to cease construction of the waterworks. Mr. Wright also requested, in a copy of the same letter, that the county cease issuing building permits for homes that would use the Brightview Estates water system. Both parties were requested to prevent occupancy of finished homes.

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Conclusion:

The Brightview Water Company constructed a water supply system that does not comply with Virginia Waterworks Regulations. The company connected to that system 28 homes, five of which will soon be occupied. These actions were taken without the approval of the Virginia Department of Health or a permit from the Commissioner of Health and are violations Virginia Waterworks Regulations and the Code of Virginia.

Recommendation:

The staff of the Bureau of Water Supply Engineering has made a full investigation of the matter and believes that a formal hearing should be held to hear all facts and resolve the issue by order of the Commissioner. The Bureau recommends that the order direct the Brightview Water Company to:

1. Employ a consulting engineer registered in Virginia to redesign the Brightview Estates waterworks in accord with Virginia Waterworks Regulations and;
2. Submit plans and specifications for the redesigned waterworks to the Bureau for approval and issuance of a construction permit and;
3. Reconstruct the Brightview Estates water system in accord with approved plans and the construction permit and,
4. Cease construction of new homes, sale of lots and homes, making connections to the system and;
5. Prevent occupancy of existing homes in the subdivision until the waterworks are approved by a State Health Department Waterworks Operations Permit.

These recommendations will bring the waterworks into compliance with the Regulations until a permanent operation permit can be issued for the water supply system.

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COMMONWEALTH OF VIRGINIA

James B. Kenley, M.D.
Commissioner

Department of Health
Richmond, VA 23219

COMMONWEALTH OF VIRGINIA, ES REL.,
JAMES B. KENLEY, M.D.
State Health Commissioner

Issuer

et

Brightview Water Company
111 Brightview Drive
Clear, Virginia 22222

and

Brightview Corporation, Inc.
111 Brightview Drive
Clear, Virginia 22222

AND

John Allen Wronge
111 Brightview Drive
Clear, Virginia 22222

Applicants

ORDER OF AGREEMENT

COMMONWEALTH OF VIRGINIA

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APPENDIX 21N

SECTION A: Statement of Agreement

As a result of an informal hearing on September 1, 1979, between agents of the parties; namely James Arnold Wright for the Issuer and John Allen Wrong for the Applicants; the parties enter this Order of Agreement after due consideration. It is the intent of the issuer that laws and regulations of this Commonwealth be most expeditiously served and the public health and welfare be protected by entering into this agreement. It is the intent of the applicants to demonstrate their desire that the Brightview Estates water supply come into compliance with the law and regulations and to avoid civil litigation between the parties.

SECTION B: Terms of Agreement

The applicants agree that:

1. By October 5, 1978, they will retain the services of a consulting engineer certified to practice in Virginia and experienced in sanitary engineering practices.
2. They will require the aforementioned consulting engineer to develop engineering plans and specifications by November 5, 1978, which define such improvements to the Brightview Estates water supply as necessary to bring the system into compliance with Virginia Waterworks Regulations.
3. On or before November 5, 1978, they or their agent will deliver the aforementioned plans and specifications to the Thomasville Regional Office, Virginia Department of Health, 111 South Street, Thomasville, Virginia 22223.
4. They will not engage in further home construction, lot sales, home sales, or the connection of homes to the waterworks at Brightview Estates until they receive a permit to operate that public water supply from the State Health Commissioner.
5. They will prevent occupancy of homes in Brightview Estates whose water supply is in violation of the Virginia Waterworks Regulations.
6. They and their agents will henceforth abide by the Virginia Waterworks Regulations in all details.

The issuer agrees that:

1. That within ten work days from the submittal of any plans, specification, applications, or proposals made by the applicants, the official response of the State Health Department will be issued. This condition will terminate after issuance of a waterworks operation permit for the Brightview Estates water supply.

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2. That no litigation will be brought in the matter of Brightview Estates public water supply until the applicants fail to abide by this agreement, or until the public health or welfare may be endangered by the such forbearance. This condition will terminate after issuance of a waterworks operation permit for the Brightview Estates water supply. The issuer shall decide when the applicant has failed to abide by the agreement or when the public health or welfare may be endangered.

SECTION C: Authority

The State Health Commissioner is the chief executive officer of the Virginia Department of Health and the principle agent of the State Board of Health. The Commissioner is empowered to act with the authority of the Board when it is not in session.

The State Board of Health is authorized by Title 32.1, Chapter 6, Article 2 of the Code of Virginia (1950), as amended, to regulate the operation of public water supplies and waterworks. Section 32.1-169 grants the Board, " - - general supervision and control over all water supplies and waterworks in the Commonwealth - - " insofar as the quality of the water may effect public health and welfare grants that the Board may require all water supplies be pure water. Section 32.1-170 grants that the Board may adopt regulations governing waterworks, water supplies, and pure water including criteria and procedures. Section 32.1-172 directs that, "No owner shall establish, construct, or operate any waterworks or water supply in the Commonwealth without a written permit from the Commissioner." In Section 32.1-26, "The Board is authorized to issue orders to require any person to comply with the provisions of any law administered by it, the Commissioner or the Department or any regulation promulgated by the Board or to comply with any case decision - - -."

The Virginia Waterworks Regulations, 1982 Edition, at Section 3.06 authorize the Commissioner to issue orders and at Section 3.14 requires a permit prior to construction or operation of waterworks or water supplies. The procedure of application for a construction permit is defined in detail in Section 3.15. The procedure of application for an operation permit is defined in detail in Section 3.21, and 3.22 and 3.23.

SECTION D: Waiver of Hearing

The Applicants affirm that they are knowledgeable of the legal rights they have to hearings on their case under the following statutes and regulations.

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Administrative Process Act, Title 9,
Chapter 1.1:1., Article 4, Code of Virginia
(1950), as amended;

Title 32.1., Chapter 1, Article 4, Sections
32.1-24 and 32.1-26., Code of Virginia
(1950), as amended;

Virginia Waterworks Regulations (1982),
Section 3.06.03, 3.11, 3.12, and 3.13;

and do hereby waive these rights as pertain to this order. Further, they also affirm this order to be a non-disputed order as defined in Virginia Waterworks Regulations (1982), Section 3.06.

In addition to the above, the Applicants have reviewed all the facts present in this order and find them true and accurate. Therefore, the Applicants affirm these issues of fact to be outside the review of the court except as specified in Title 9, Chapter 1.1:1, Article 4, Section 9-6.14:17., Code of Virginia (1950), as amended.

SECTION E: Notice of Consequence of Violation Of This Order

The Applicants are aware of the following statutes concerning possible consequences of their failure to fulfill this order:

Code of Virginia (1950), as amended,

Title 32.1, Chapter 1, Article 4, Section 32.1-27 which reads," Penalties, injunctions, civil penalties and charges for violations,-A. Any person willfully violating or refusing, failing or neglecting to comply with any regulation or order of the Board or Commissioner or any provision of this title shall be guilty of a Class 1 misdemeanor unless a different penalty is specified.

B. Any person violating or failing, neglecting, or refusing to obey any lawful regulation or order of the Board or Commissioner or any provision of this title may be compelled in a proceeding instituted in an appropriate court by the Board or Commissioner to obey such regulation, order or provision of this title and to comply therewith by injunction, mandamus, or other appropriate remedy.

C. Without limiting the remedies which may be obtained in subsection B., any person violating or failing, neglecting or refusing to obey an injunction, mandamus or other remedy obtained pursuant to subsection B shall be subject, in the discretion of the court to a civil penalty not to exceed ten thousand dollars for each violation. Each day of violation shall constitute a separate offense.

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D. With the consent of any person who has violated or failed, neglected, or refused to obey any regulation or order of the Board or Commissioner or any provision of this title, the Board may provide, in an order issued by the Board against such person for the payment of civil charges for past violations in specific sums not to exceed the limit specified in subsection C. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection C."

Title 32.1, Chapter 6, Article 2, Sections 32.1-176 which reads, "Civil penalty,-In addition to the provisions of §32.1-27, any owner who violates any provisions of this article or any owner who violates any provisions of this article or any order or regulation adopted pursuant thereto shall, upon such finding by a court of competent jurisdiction, be assessed a civil penalty of not more than five thousand dollars for each day of such violation. All penalties under this section shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth."

Title 8.01, Chapter 22, which provides for placing of funds and assets into receivership.

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SECTION F: Acknowledgement of Agreement

The Applicants and issuer have reviewed the above agreement and hereby acknowledge and affirm it without reservation and agree also that it will take effect immediately.

Applicants:

Date	Representing	Signature	Title
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

The foregoing instrument was acknowledged before me this _____
day of _____, 19__, by (name of person acknowledged).

Notary Public

My commission expires:

This is an Order of the State Board of Health and the State Health Commissioner in accord with Title 32.1, Code of Virginia (1950), as amended.

Issuer:

(Date) _____

James B. Kenley, M.D.
State Health Commissioner

The foregoing instrument was acknowledged before me this _____
day of _____, 19__, by (name of person acknowledged).

Notary Public

My commission expires:
